



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/169798

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on December 10, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's FS benefits for October, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Julie Miller

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On September 28, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would decrease from \$51/month to \$38/month for October 1, 2015. This was

based on income from Social Security of \$684/month, rent of \$157/month and a utility standard of \$119. Heat is included in the Petitioner's rent but she pays a separate electric expense.

3. Prior to October 1, 2015, the agency incorrectly applied the maximum utility standard to the Petitioner's FS case.
4. On November 19, 2015, the Petitioner was approved to receive Energy Assistance.

DISCUSSION

In determining the amount of FS to be issued each month, the agency must budget all of the recipient's nonexempt income, including earned and unearned income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$155 per month for a one-person household. 7 C.F.R. §273.9(d)(1); FoodShare Handbook (FSH), § 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FSH, § 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FSH, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FSH, § 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FSH, § 4.6.7.

On April 28, 2014, a change was made to the standard utility allowance/deduction available to household receiving FS benefits. See DHS Operations Memo 14-16. Households that have received a payment from the Wisconsin Housing Energy Assistance Program (WHEAP) in the previous 12 months receive the full Housing Standard Utility Allowance (HSUA) of \$458/month. Households that pay two or more non-heat qualifying utility expenses (phone, water, sewer, electric, cooking fuel, or trash) receive a Limited Utility Allowance (LUA) of \$293/month. Households that pay only a non-heat electric bill receive an Electric Utility Allowance (EUA) of \$119/month. Household that pay only water, sewer, septic tank installation/maintenance or wastewater treatment bills receive a Water and Sewer Utility Allowance (WUA) of \$78/month. Household that pay only a cooking fuel expense receive a Fuel Utility Allowance (FUA) of \$46/month. Households that pay only a telephone expense, including cell phones, receive a Phone Utility Allowance (PUA) of \$30/month. Households that pay only a trash or garbage bill receive a Garbage and Trash Utility Allowance (TUA) of \$20/month.

In this case, the Petitioner appealed the reduction in benefits effective October 1, 2015. The primary reason for the reduction in benefits was the agency's correction of a previous error. The agency had previously allowed the maximum utility standard (\$450) for the Petitioner based on receipt of Energy Assistance. This was an agency error as the Petitioner was not receiving Energy Assistance at the time. Therefore, when the case was reviewed for October 1, 2015, the agency updated the case to reflect a utility standard allowance of \$119 based on Petitioner's report that her utility expenses included only an electric expense (heat is included in her rent).

At the hearing, the Petitioner testified that she was approved on November 19, 2015 for Energy Assistance. In addition, the Petitioner reported that she has a monthly phone expense. The Petitioner also provided evidence that her rent expense is \$156/month. As a result of this information, the agency worker indicated that she would update the Petitioner's FS case for November, 2015. The Petitioner was advised that the agency will issue a new Notice of Decision to her regarding her November, 2015 benefits and benefits going forward. Petitioner was advised that if she disagrees with the new benefit amount, she will need to file a new request for hearing.

Because of the new information and the agency update for November, 2015, the only issue remaining for the hearing was FS benefits for October, 2015. I reviewed the agency's FS budget calculations for the Petitioner. It correctly budgeted her income and provided a standard deduction. It correctly allowed a

\$119 utility standard based on information known to the agency at the time. Though the agency's rent expense was off by \$1, I determined that this did not change the benefit amount.

Based on the information and evidence provided, I conclude that the agency properly determined the Petitioner's FS benefits for October, 2015.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner's FS benefits for October, 2015.

THEREFORE, it is **ORDERED**

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of December, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 18, 2015.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability